

**BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

3 IN THE MATTER OF)
CHRISTENSON TANKER TRANSPORT,)
4)
Appellant,) PCIB No. 83-145
5)
v.) FINAL FINDINGS OF FACT,
6) CONCLUSIONS OF LAW,
7 STATE OF WASHINGTON,) AND ORDER
DEPARTMENT OF ECOLOGY,)
Respondent.)

This matter, the appeal from the assessment of a \$1,500 civil penalty for the alleged violation of RCV 90.46.080, came before the Pollution Control Hearings Board, David Alana (presiding), Gayle Rothrock and Lawrence J. Faust, at a formal hearing in Lacey on November 4, 1983.

15 Appellant appeared pro se; respondent was represented by Patricia
16 O'Brien, Assistant Attorney General.

17 Having heard the testimony, having examined the exhibits, and
18 having considered the contentions of the parties, the Board makes these

$$\left\{ \frac{1}{2} \left(1 - \frac{1}{2} \right)^{\frac{1}{2}} \left(1 - \frac{1}{2} \right)^{\frac{1}{2}} \left(1 - \frac{1}{2} \right)^{\frac{1}{2}} \right\} =$$

1

Appellant is a proprietorally doing business in Seattle,
Washington. Since August 1, 1977, the bus route #101, which receives
money from Mazza Cheese Company (MCC) on a daily basis. Appellant's
duties require the removal and disposal of money generated by MCC.

T T

8 | Appellant delivers the whey to about eighteen dairies in the
9 | nearby vicinity. About seven to ten dairies receive daily
10 | deliveries. These dairies receive about 11 loads of whey per day, a
11 | 3000 gallons per load, as supplemental cattle feed.

- 1 -

Because of penalty clauses in appellant's agreement with FCC,
appellant has always had incentive to reduce C. S. and C whey. When
there was not enough dairies to purchase in eastern Idaho and
use the whey, appellant dumped the excess on 30 to 40 acres of
pasture. After the pasture was saturated, appellant began dumping the
whey (6200 gallons per day) in a nearby area near the pasture.
Appellant did not intend to get whey in any way, but the fact
he travelled 30 to 100 yards to the carbon river, a water of the state,

三

Respondent is the state agency assigned by statute to implement and enforce the provisions of chapter 90, as well.

26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
27 RECOMMENDATION

V

2 On January 31, 1983, respondent investigated a complaint relating
3 to appellant's activities near the Carbon River. A white odorous
4 liquid was found in the swampy area near the river. The liquid was
5 tentatively identified as whey. Appellant confirmed the
6 identification. Appellant and RCC were warned by letter of the
7 violations and of civil penalties which would ensue for further
8 dumpings. Appellant stopped dumping whey in the swampy area sometime
9 in February, 1983.

VI

10 On February 23, 1983, respondent's employees again visited the
11 dump site. An orange growth was observed where the waste entered the
12 water. This growth was visible in the water approximately 0.6 miles
13 to its point of entry into the Carbon River.

14 Appellant admitted dumping at the site and was informed that
15 enforcement action would be forthcoming. A \$3,000 civil penalty was
16 recommended by the inspector.

VII

17 On May 2, 1983, respondent issued a "Notice of Violation" and
18 "Notice of Penalty Incurred and Due" to appellant. On May 11, 1983,
19 appellant acknowledged his error and stated that his disposal methods
20 were changed. A suspension of the penalty was requested on an
21 application for relief from the penalty. On June 20, 1983, the relief
22 was denied by respondent. Thereafter, on July 7, 1983, appeal of the
23 penalty was made to this Board.

24 FINAL FINDINGS OF FACT,
25 CONCLUSIONS OF LAW & ORDER
PCB# No 83-145

VII

To avoid dumping excess whey, appellant has increased his manure volume by 9000 gallons per day. He has added an additional 6000 gallon tank trailer to his equipment and repaired a tractor-truck to pull it. Appellant has spent about \$20,000 to improve his equipment. He now has three trucks and three employees.

T 5

The dump area continues to show signs of past burppings, however, such evidence should become less noticeable in the future.

15

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these findings the Board comes to these

CONCLUSIONS OF LAW

1

16 | Appellant discharged whey, a pollutant, into waters of the state
17 | in February, 1983, and at dates earlier, in violation of RCH 90.48.180.

11

Code 90.16-111 provides for a penalty of up to \$5,000 per day for each violation of 90.48.030. A civil penalty of \$1,500 is reasonable in amount considering the length of time of the damages and the warning afforded appellant. Accordingly, the amount of the penalty should be affirmed. However, in view of appellant's nature, character, and size of business, and his assurances that future bad acts will not occur, removal of a portion of the maximum fine

2) FINAL FINDINGS OF FACT,
3) CONCLUSIONS OF LAW & ORDER
4) RULING No. 22-145

should be suspended on condition that \$500 of the penalty is promptly paid and there be no further violations of ch. 90.48 RCW.

III

4 Any Finding of Fact which should be deemed a Conclusion of Law is
5 hereby adopted as such.

6 From these Conclusions the Board enters this

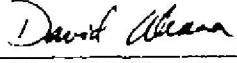
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 83-145

1 ORDER

2 The \$1,500 civil penalty assessed by the Department of Ecology in
3ocket No. DE 83-231 is affirmed; provided however, that 41,000 of the
4 penalty amount shall be suspended on condition that appellant pay \$300
5 to the Department of Ecology or or before January 26, 1984, and that
6 appellant shall not violate any provision of chapter 90 13 RCW for a
7 period of eight years after the date of this order.

8 DATED this 16th day of December, 1983

9 POLLUTION CONTROL FUNDING BOARD

10 
11 DAVID ABRAM, Lawyer Member